

Senate Bill No. 408

Passed the Senate August 31, 2005

Secretary of the Senate

Passed the Assembly August 18, 2005

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2005, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 17207, 17408, and 17419 of the Financial Code, relating to escrow agents.

LEGISLATIVE COUNSEL'S DIGEST

SB 408, Margett. Escrow agents.

Existing law provides for the licensing and regulation of escrow agents by the Commissioner of Corporations. Existing law requires the commissioner, until January 1, 2006, to charge and collect specified fees and assessments. Existing law, commencing January 1, 2006, revises the fees and assessments the commissioner is required to charge and collect.

This bill would change these dates to January 1, 2010, and would make related changes.

Existing law authorizes the commissioner to impose penalties on a person who fails to provide specified information to the commissioner.

This bill would impose a limit on the amount of those penalties.

Existing law requires a person seeking employment with an escrow agent to complete a specified employment application that asks certain questions, including whether the person has a criminal history.

This bill would provide that the question regarding a person's criminal history excludes inquiry into minor traffic citations that do not constitute a misdemeanor or felony offense.

The people of the State of California do enact as follows:

SECTION 1. Section 17207 of the Financial Code, as amended by Section 1 of Chapter 499 of the Statutes of 2001, is amended to read:

17207. The commissioner shall charge and collect the following fees and assessments:

(a) For filing an application for an escrow agent's license, six hundred twenty-five dollars (\$625) for the first office or location and four hundred twenty-five dollars (\$425) for each additional office or location.

(b) For filing an application for a duplicate of an escrow agent's license lost, stolen, or destroyed, or for replacement, upon a satisfactory showing of the loss, theft, destruction, or surrender of certificate for replacement, two dollars (\$2).

(c) For investigation services in connection with each application, one hundred dollars (\$100), and for investigation services in connection with each additional office application, one hundred dollars (\$100).

(d) For holding a hearing in connection with the application, as set forth under Section 17209.2, the actual costs experienced in each particular instance.

(e) (1) Each escrow agent shall pay to the commissioner for the support of this division for the ensuing year an annual license fee not to exceed two thousand eight hundred dollars (\$2,800) for each office or location.

(2) On or before May 30 in each year, the commissioner shall notify each escrow agent by mail of the amount of the annual license fee levied against it, and that the payment of the invoice is payable by the escrow agent within 30 days after receipt of notification by the commissioner.

(3) If payment is not made within 30 days, the commissioner may assess and collect a penalty, in addition to the annual license fee, of 10 percent of the fee for each month or part of a month that the payment is delayed or withheld.

(4) If an escrow agent fails to pay the amount due on or before the June 30 following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the certificate issued to the company.

(5) If, after an order is made pursuant to paragraph (4), a request for a hearing is filed in writing and a hearing is not held within 60 days thereafter, the order is deemed rescinded as of its effective date. During any period when its certificate is revoked or suspended, a company shall not conduct business pursuant to this division, except as may be permitted by order of the commissioner. However, the revocation, suspension, or surrender of a certificate shall not affect the powers of the commissioner as provided in this division.

(f) Fifty dollars (\$50) for investigation services in connection with each application for qualification of any person under

Section 17200.8, other than investigation services under subdivision (c) of this section.

(g) A fee not to exceed twenty-five dollars (\$25) for the filing of a notice or report required by rules adopted pursuant to subdivision (a) or Section 17203.1.

(h) (1) If costs and expenses associated with the enforcement of this division, including overhead, are or will be incurred by the commissioner during the year for which the annual license fee is levied, and that will or could result in the commissioner's incurring of costs and expenses, including overhead, in excess of the costs and expenses, including overhead, budgeted for expenditure for the year in which the annual license fee is levied, then the commissioner may levy a special assessment on each escrow agent for each office or location in an amount estimated to pay for the actual costs and expenses associated with the enforcement of this division, including overhead, in an amount not to exceed five hundred dollars (\$500) for each office or location. The commissioner shall notify each escrow agent by mail of the amount of the special assessment levied against it, and that payment of the special assessment is payable by the escrow agent within 30 days of receipt of notification by the commissioner. The funds received from the special assessment shall be deposited into the State Corporations Fund and shall be used only for the purposes for which the special assessment is made.

(2) If payment is not made within 30 days, the commissioner may assess and collect a penalty, in addition to the special assessment, of 10 percent of the special assessment for each month or part of a month that the payment is delayed or withheld. If an escrow agent fails to pay the special assessment on or before 30 days following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the certificate issued to the company. If an order is made under this subdivision, the provisions of paragraph (5) of subdivision (e) of this section shall apply.

(3) If the amount collected pursuant to this subdivision exceeds the actual costs and expenses, including overhead, incurred in the administration and enforcement of this division and any deficit incurred, the excess shall be credited to each escrow agent on a pro rata basis.

(i) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

SEC. 2. Section 17207 of the Financial Code, as amended by Section 2 of Chapter 499 of the Statutes of 2001, is amended to read:

17207. The commissioner shall charge and collect the following fees and assessments:

(a) For filing an application for an escrow agent's license, six hundred twenty-five dollars (\$625) for the first office or location and four hundred twenty-five dollars (\$425) for each additional office or location.

(b) For filing an application for a duplicate of an escrow agent's license lost, stolen, or destroyed, or for replacement, upon a satisfactory showing of the loss, theft, destruction, or surrender of certificate for replacement, two dollars (\$2).

(c) For investigation services in connection with each application, one hundred dollars (\$100), and for investigation services in connection with each additional office application, one hundred dollars (\$100).

(d) For holding a hearing in connection with the application, as set forth under Section 17209.2, the actual costs experienced in each particular instance.

(e) (1) Each escrow agent shall pay to the commissioner its pro rata share of all costs and expenses reasonably incurred in the administration of this division, as estimated by the commissioner for the ensuing year, and of any deficit actually incurred or anticipated in the administration of this division in the year in which the assessment is made. Commencing with the assessment for fiscal year 2010-11, the assessment shall not increase by more than 25 percent over the amount assessed in the prior year. The pro rata share shall be the proportion which a licensee's gross income from escrow operations bears to the aggregate gross income from escrow operations of all licensees as compiled by the commissioner. The pro rata share shall not include the costs of any examinations provided for in Section 17405.1, unless they cannot be collected from the company examined. If the pro rata assessment collected pursuant to this paragraph exceeds the actual costs and expenses incurred in the administration of this

division and any deficit incurred, the excess shall be credited to each escrow agent on a pro rata basis.

(2) On or before May 30 in each year, the commissioner shall notify each escrow agent by mail of the amount assessed and levied against it, and that the payment of any invoice for assessments of the commissioner is payable by the escrow agent in three installments with the first installment payable within 20 days after receipt of notification by the commissioner and the second and third installments payable within 20 days of August 31 and November 30, respectively, in each year. The first installment payment shall be 50 percent of the amount assessed, and the second and third installment payments shall each be 25 percent of the amount assessed.

(A) If the first installment payment is not made within 20 days, the commissioner may assess and collect a penalty, in addition to the assessment, of 10 percent of the assessment for each month or part of a month that the payment is delayed or withheld.

(B) If the second installment payment is not made within 20 days of August 31 in each year, the commissioner may assess and collect a penalty, in addition to the assessment, of 10 percent of the assessment for each month or part of a month that the payment is delayed or withheld.

(C) If the third installment payment is not made within 20 days of November 30 in each year, the commissioner may assess and collect a penalty, in addition to the assessment, of 10 percent of the assessment for each month or part of a month that the payment is delayed or withheld.

(3) In the levying and collection of the assessment, an escrow agent shall not be assessed for, nor be permitted to pay less than, three hundred fifty dollars (\$350) per year, per location.

(4) (A) If an escrow agent fails to pay the first assessment on or before the June 30 following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the certificate issued to the company.

(B) If an escrow agent fails to pay the second installment payment on or before September 30 in each year, the commissioner may by order summarily suspend or revoke the certificate issued to the company.

(C) If an escrow agent fails to pay the third installment payment on or before December 31 in each year, the commissioner may by order summarily suspend or revoke the certificate issued to the company.

(D) If, after this order is made, a request for a hearing is filed in writing and a hearing is not held within 60 days thereafter, the order is deemed rescinded as of its effective date. During any period when its certificate is revoked or suspended, a company shall not conduct business pursuant to this division, except as may be permitted by order of the commissioner. However, the revocation, suspension, or surrender of a certificate shall not affect the powers of the commissioner as provided in this division.

(f) Fifty dollars (\$50) for investigation services in connection with each application for qualification of any person under Section 17200.8, other than investigation services under subdivision (c) of this section.

(g) A fee not to exceed twenty-five dollars (\$25) for the filing of a notice or report required by rules adopted pursuant to subdivision (a) or Section 17203.1.

(h) This section shall become operative January 1, 2010.

SEC. 2. Section 17408 of the Financial Code is amended to read:

17408. (a) If any person subject to this division fails to make any report required by law or by the commissioner, the commissioner may immediately cause the books, records, papers, and affairs of said person to be thoroughly examined.

(b) The commissioner may impose, by order, a penalty on any person who fails, within the time specified in any written demand of the commissioner, (1) to make and file with the commissioner any report required by law or requested by the commissioner, or (2) to furnish any material information required by the commissioner to be included in the report. The amount of the penalty may not exceed one hundred dollars (\$100) for each day for the first five days the report or information is overdue, and thereafter may not exceed five hundred dollars (\$500) for each day the report or information is overdue.

(c) If, after an order has been made under subdivision (b), a request for hearing is filed in writing within 30 days of the date of service of the order by the person to whom the order was

directed, a hearing shall be held in accordance with the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner shall have all the powers granted under that chapter.

(d) If the person fails to file a written request for a hearing within 30 days of the date of service of the order, the order imposing the penalty shall be deemed a final order of the commissioner, and the penalty shall be paid within five business days.

(e) If a hearing is requested, the penalty shall be paid within five business days after the effective date of any decision in the case ordering payment to be made.

SEC. 3. Section 17419 of the Financial Code is amended to read:

17419. On and after January 1, 1992, any person seeking employment with an escrow agent shall complete an employment application on or before the first day of employment which includes, at least, the following information. A copy of the employment application shall be forwarded to the commissioner on or before the first day of the applicant's employment. Persons required to file a statement of identity and questionnaire pursuant to subdivision (f) of Section 17209 or Section 17212.1 are not required to file the employment application set forth in this section. Each person completing the employment application shall be given the notice required by the Information Practices Act (Section 1798.17 of the Civil Code), copies of which may be obtained from the commissioner. Nothing in this section shall limit an escrow agent from requesting additional information from an applicant.

STATEMENT OF IDENTITY
AND EMPLOYMENT APPLICATION

Name of Escrow Company: _____

Escrow Agent License Number: _____

1. Exact Full Name:

(Please Print or Type) First Name Middle Name Last Name
(Do not use initials or nicknames)

Title of position to be filled in connection with the preparation of this employment application.

2. Employment for the last 10 years:

From	To	Employer Name and Address	Occupation and Duties
	Present		

NOTE: Attach separate schedule if space is not adequate.

3. Residence addresses for the last 10 years:

From	To	Street	City	State
	Present			

NOTE: Attach separate schedule if space is not adequate.

4. Have you ever been named in any order, judgment or decree of any court or any governmental agency or administrator, temporarily or permanently restraining or enjoining you from engaging in or continuing any conduct, practice or employment?

☐ Yes

☐ No

If the answer is “Yes”, please
complete the following:

Date of Suit: _____
Location of Court (City, County, State): _____
Nature of Suit: _____

Note: Attach a certified copy of any order, judgment, or decree.

5. Have you ever been refused a license to engage in
any business in this state or any other state, or has any such license ever
been suspended or revoked?

☐ Yes

☐ No

If the answer is “Yes,” please
complete the following:

State: _____ Title of State Department: _____
Nature of License and Number: _____

Note: Attach a certified copy of any order, judgment, or decree.

6. Have you ever been convicted of or pleaded nolo
contendere to a crime other than minor traffic citations that do not
constitute a misdemeanor or felony offense?

NOTE: “Convicted” includes a verdict of guilty by judge or jury, a plea of guilty or of nolo contendere or a forfeiture of bail. All convictions must be disclosed even if the plea or verdict was thereafter set aside and the charges against you dismissed or expunged or if you have been pardoned. Convictions occurring while you were a minor must be disclosed unless the record of conviction has been sealed under Section 1203.45 of the California Penal Code or Section 781 of the California Welfare and Institutions Code.

☐ Yes

☐ No

If the answer is “Yes” please
complete the following:

Date of Case: _____

Location of Court (City, County, State): _____

Nature of Case: _____

Note: Attach a certified copy of any order, judgment, or decree.

7. Have you ever been a defendant in a civil court
action other than divorce, condemnation or personal injury?

☐ Yes ☐ No

If the answer is "Yes" please complete the following:

Date of Suit: _____

Location of Court (City, County, State): _____

Nature of Suit: _____

Note: Attach a certified copy of any order, judgment, or decree.

8. Have you ever changed your name or ever been
known by any name other than that herein listed?
(Including a woman's maiden name)

☐ Yes ☐ No

If so, explain. Change in name through marriage or court order should
also be listed.

EXACT DATE OF EACH NAME CHANGE MUST BE LISTED.

9. Have you ever done business under a fictitious firm
name either as an individual or in the partnership or corporate form?

☐ Yes ☐ No

If the answer is "Yes" set forth particulars:

10. Have you ever been a subject of a bankruptcy or a
petition in bankruptcy?

☐ Yes ☐ No

If the answer is “Yes” give date, title of case, location of bankruptcy filing:

11. Have you ever been refused a bond, or have you ever had a bond revoked or canceled?

☐ Yes ☐ No

If the answer is “Yes” give details:

12. In what capacity will you be employed? _____
(e.g., Clerk, Escrow Officer, Receptionist, etc.)

13. Do you expect to be a party to, or broker or salesman in connection with escrows conducted by the escrow company which is employing you?

☐ Yes ☐ No

If the answer is “Yes” please explain:

NOTE: Attach separate schedule if space is not adequate.

VERIFICATION

I, the undersigned, state that I am the person named in the foregoing Statement of Identity and Employment Application; that I have read and signed said Statement of Identity and Employment Application and know the contents thereof, including all exhibits attached thereto, and that the statements made therein, including any exhibits attached thereto, are true.

Any person who provides false information is guilty of a felony and shall, upon conviction, be fined not more than ten thousand dollars (\$10,000) or imprisoned in the state prison for one year or more or in a county jail for not more than one year, or be punished by both such fine and imprisonment. Any person who knows or should have known of a violation of this section shall immediately report the violation in writing to the commissioner.

I certify/declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at _____
(City)

(County) (State)
this _____ day of _____, 20 ____.

(Signature of Declarant)

Approved _____, 2005

Governor